

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014060963

ORDER FOLLOWING PREHEARING
CONFERENCE

On October 20, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. Attorney Margaret Roberts appeared on Student's behalf. Attorney Lenore Silverman appeared on Oakland's behalf. Attorney Suge Lee on Student's behalf and attorney David Mishook on Oakland's behalf participated as observes only. The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following orders:

1. Hearing Dates, Times, and Location. The hearing shall take place at **the Office of Administrative Hearings located at 1515 Clay Street, Suite 206, Oakland, California, 94612.** It shall take place on October 28, 29, and 30, 2014, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On October 28, 2014, the hearing shall begin at 9:30 a.m. and end at 5:00 p.m., and shall begin at 9:00 a.m. and end at 5:00 p.m. on remaining days, unless otherwise ordered.¹

The parties shall immediately provide hearing dates to proposed witnesses, and shall subpoena witnesses if necessary, to ensure their availability. Failing to properly notify or subpoena a witness does not constitute good cause for their unavailability. .

¹ Ms. Silverman identified calendaring conflicts for October 30 and 31 for a conference, November 4 for a federal court appearance, and an expedited hearing commencing on November 5, 2014. The original dates are to remain on calendar; however, the undersigned ALJ informed Ms. Silverman that in this case, she may file a written motion directly to the Presiding Judge requesting that her calendaring conflicts be considered for continuing the hearing. If she elects to file a motion, that motion will be an original motion as opposed to a motion for reconsideration.

2. Issues and Proposed Resolutions. The issues below were discussed at the PHC and reworded for clarity:

Issue 1: Did Oakland fail to assess Student in all areas of suspected disability including assistive technology, mental health, transitional/vocational needs, and speech and language?

Issue 2: Did Oakland deny Student a free appropriate public education during the 2012-2013 school year by:

- a. Preventing Parent(s) from meaningfully participating in Student's educational decision-making process or denying Student an educational benefit when it:
 - i. failed to timely complete and hold an individualized education program team meeting to discuss Student's triennial assessments;
 - ii. failed to have required IEP team members present at the June 2013 IEP meeting, specifically a general education teacher and an administrator from Oakland;
 - iii. failed to provide meeting notices to Parent(s) in their primary language;
 - iv. predetermined the IEP addendum in June 2013 and did not explain the terms of the addendum to Parent(s); and
 - v. failed to provide information regarding Student's progress on his academic and behavioral goals?
- b. Failing to offer and provide an IEP that met Student's unique needs and was reasonable calculated to provide educational benefit by:
 - i. failing to offer Student mental health services in the general education environment;
 - ii. failing to offer curriculum modifications or accommodations recommended by the school psychologist and speech therapist, or other necessary supplemental aids, supports or services in the general education environment;
 - iii. failing to offer adequate amount and type of resource specialist program (RSP) services, specifically one period per day of small group pull-out services;

- iv. failing to offer an appropriate behavior support plan based on a functional behavioral assessment or adequate data or observation;
- v. failing to implement Student's last agreed upon and implemented IEP for most of the 2012-2013 school year, specifically speech and language and RSP services?

Issue 3: Did Oakland deny Student a FAPE during the 2013-2014 school year by:

- a. Preventing Parent(s) from meaningfully participating in Student's educational decision-making process or denying Student an educational benefit when it:
 - i. failing to timely hold Student's annual IEP team meeting;
 - ii. failing to inform Parent of the extent to which it failed to implement Student's IEP; and
 - iii. failing to provide Parent(s) with timely information regarding Student's progress toward his annual IEP goals.
- b. Failing to offer and provide an IEP that met Student's unique needs and was reasonable calculated to provide educational benefit by:
 - i. failing to modify Student behavior support plan as recommended by his assessing school psychologist;
 - ii. failing to include counseling or mental health services in his IEP;
 - iii. failing to provide consultation services among school staff and Student's mental health provider as recommended by the assessing school psychologist;
 - iv. failing to offer appropriate amount and type of RSP services, specifically increased small group pull-out and push-in RSP services;
 - v. failing to develop and implement an adequate transition plan;
 - vi. failing to offer appropriate social, emotional, and behavioral goals;
 - vii. failing to offer modifications and accommodations as recommended by assessors or other necessary supplemental aids, supports or services in the general education environment;

- viii. failing to offer appropriate goals; and
- ix. failing to implement Student's IEP for most of the 2013-2014 school year, specifically regarding pull-out and push-in RSP services and speech and language services?

Issue 4: Did Oakland deny Student a FAPE during the 2014-2015 school year by failing to offer and provide an IEP that meets Student's unique needs and is reasonably calculated to provide him educational benefit by:

- a. Failing to offer mental health services or supports;
- b. Failing to offer appropriate behavioral services or supports;
- c. Failing to offer appropriate amount and type of RSP services, specifically daily pull-out and push-in services;
- d. Failing to develop or implement an adequate transition plan;
- e. Failing to offer appropriate social, emotional, functional academic, behavior, and life skills goals;
- f. Failing to offer modifications and accommodations as recommended by assessors or other necessary supplemental aids, supports or services in the general education environment; and
- g. Failing to offer appropriate speech and language services and terminating them without an assessment?

Proposed Resolution: Oakland will amend Student's IEP to include pull-out individual RSP services for 50 minutes per day, life skills instruction for 50 minutes per week, mental health counseling for 30 minutes per week, speech and language services for 50 minutes per week, collaboration among service providers and teachers for 15 minutes per week, a behavior support plan in consultation with nonpublic agency providing behavior services, and accommodations including noise blocking headphones, a quiet break space, all class work modified, use of visual cues and aides in all classes, and a vocation assessment. Student also seeks independent educational evaluations in speech and language, assistive technology, and a functional vocational assessment. Student further seeks an IEP team meeting to determine need for assistive technology, and transitional services, aides, and supports. For compensatory education, Student seeks 270 hours of 1-to-1 tutoring, 50 hours with a life skills coach, 20 hours of individual speech and language, and transportation to and from the compensatory service locations.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall number exhibits in a way that clearly identifies the party offering the exhibit (for example "S-1" for Student or "D-1" for District). Each

exhibit shall be internally paginated, by exhibit, or all pages of a party's exhibit binder shall be Bates-stamped or otherwise consecutively numbered. Each exhibit will consist of one document or short series of documents that are related (for example, each IEP shall have its own exhibit rather than a single exhibit for all IEP's). Each exhibit binder shall contain a detailed table of contents. Each party shall serve an exhibit binder containing its respective exhibits on the other party in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by a written declaration under penalty of perjury, and the ALJ rules that it is admissible.²

4. Witnesses.

a) Each party is responsible for procuring their own witnesses; however, the parties shall make witnesses under its control reasonably available to the other party. Witnesses shall be scheduled in a way that avoids delays and minimizes or eliminates having to call a witness twice or out of order. Only witnesses disclosed in a party's prehearing conference statement may testify, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) The parties are ordered to meet and confer to develop a proposed joint witness schedule. The proposed schedule will be presented to the ALJ at the beginning of the hearing. Prior to commencing the hearing, the ALJ and the parties will discuss the proposed witness schedule and address scheduling issues for individual witnesses, before the schedule is finalized. The ALJ has discretion to limit the number of witnesses and the length of their testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party shall only question the witness on matters raised in the immediately preceding examination. Parties shall be required to establish their cases in chief (conducting both direct and cross) so that each witness only appears once.

6. Telephonic Testimony. A party must ask in advance if it intends to present a witness via telephone; if granted, the party shall provide the proposed witness with a complete set of exhibit binders from all parties, prior to the hearing; and shall ensure that the

² Ms. Roberts alleged that she has received an incomplete copy of Student's records including every-other page of Student's 2011 IEP. Ms. Silverman indicated that she will attempt to obtain complete copies of the requested documents but that some are maintained by a charter school not subject to this hearing.

hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. Neither party has requested telephonic testimony.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, neither party intends to record the hearing. If a request is made, the following conditions would apply to any recording: 1) that OAH's recording is the only official recording; 2) that the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; and 3) the operation of the party's recording mechanism will not be allowed to delay the hearing.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Motions. At this time, no prehearing motions are pending or contemplated other than Oakland's possible request to go dark on some scheduled hearing days. Any other motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during this prehearing conference.

9. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

10. Conduct and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

11. Special Needs and Accommodations. Student has requested that an interpreter be present throughout the hearing to provide English to Spanish and Spanish to English translation for Parent. At present neither party anticipates the need for any special accommodation for any witness or party. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning a requests for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

12. Hearing Closed To the Public. The hearing will be closed to the public.

13. Settlement. The parties are encouraged to continue their attempts to reach an agreement before the due process hearing. The parties shall inform OAH in writing

immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If a settlement is reached five days or fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. THE BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

14. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: October 21, 2014

/s/
JOY REDMON
Administrative Law Judge
Office of Administrative Hearings